IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1158 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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STATE OF GUJARAT

Versus

ANIRUDHSINHJI M JADEJA

Appearance:

1. Criminal Appeal No. 1158 of 1983

MR LR PUJARI APP for appellant

MR JB PARDIWALA appointed as amicus curiae for Respondents

CORAM : MR.JUSTICE M.C.PATEL
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 04/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.M.KAPADIA)

1. This appeal which is filed under Section 378 of the Code of Criminal Procedure, 1973 ('the Code' for short) is directed against the judgment and order dated

August 10, 1983 rendered by learned Additional Sessions Judge, Kachchh at Bhuj in Sessions Case No.16 of 1983 by which respondents/accused came to be acquitted of the offence under Section 302 read with Section 34 of the Indian Penal Code ('IPC' for short) for commission of murder of Osman alias Agha Suleman which had taken place on May 30, 1982 at 6.30 to 7 P.M. in the Vizan Out-Post, Taluka Abdasa, District Kachchh.

2. The facts of the case have been detailed in the judgment of the learned Additional Sessions Judge, therefore, it is not expedient to repeat the same all over again in verbatim and in detail in this judgment. However, the basic facts which are necessary to be discussed in this appeal are that:

2.1. Accused Nos.11 and 12, namely, Mahipsinhji Ramsingji and Khanderao Sukhdev respectively, at the relevant time were serving as Police Constables at Vizan Outpost of Abdasa Taluka of Kachchh District. According to the prosecution case, Dosabhai Valjibhai Gadhvi, P.W.6, at the relevant time was serving as PSI at Nalia Police Station. On May 31, 1982, accused No.11 reached Nalia Police Station at 2 O' clock in the night and tendered a written complaint to Dosabhai Valjibhai Gadhvi, P.W.6 that dead-body of Osman alias Agha Suleman was lying in Vizan Out-Post. On the strength of that complaint, PSI Gadhvi registered an offence and then he left for Vizan Out-Post for further investigation. On reaching Vizan Out-post, he found a dead-body lying at Vizan Out-Post and two policemen were keeping vigil at that particular place. He thereafter left for Mandvi in a jeep and met Circle Inspector and informed him about the incident. Thereafter PSI Gadhvi in company of the Circle Inspector came back to Vizan at about 7 in the morning. Inquest Panchnama was drawn and the panchnama of the scene of the offence was also prepared. Blood samples were taken and were forwarded to FSL. One PSI Desai took charge of the dead-body and carried it for the post-mortem. On May 31, 1982 statement of Romatbai, sister of the deceased, was recorded by PSI Dosabhai Gadhvi.

2.2. On June 2, 1982, Dahyabhai Bhailalbhai Parekh, P.W.7 took over the investigation and on June 8, 1982 recorded the statement of one Jakab Umar who claims to be an eye witness of the incident alongwith Romatbai, sister of the deceased. On June 25, 1982, P.W.7, PSI Parekh handed over the investigation to Circle Inspector Bhatt.

2.3. As there was a direction from Special Inspector

General of Police, CID Crime Branch, on July 31, 1982 P.W.8, Roshanlal Yadav, Police Inspector took over the investigation from Circle Inspector Bhatt. After taking over the investigation, he recorded statement of Romatbai and Jakab Umar on August 7, 1982 and also recorded statement of other witnesses. Again on August 12, 1982 he recorded further statement of Romatbai. He thereafter put all the relevant papers of investigation before the I.G. and the I.G. after perusal of all the relevant papers ultimately cleared the papers as a result of which charge-sheet against three persons other than the accused of this case came to be filed in which one of the accused was a juvenile and hence in respect of the juvenile a separate charge-sheet was filed in juvenile court while in respect of other two accused persons the charge-sheet was filed in regular criminal court.

2.4. It is the case of the prosecution that on June 2, 1982, Romatbai, sister of the deceased, had given an application in writing (Ex.22) in the form of a complaint wherein she has stated that accused Nos.11 and 12, two Police Constables, came at her house and informed her brother, that is, deceased Osman alias Agha Suleman that he has been called at the police station and accordingly the deceased accompanied accused Nos.11 and 12 to the police station. Romatbai sensed some trouble and, therefore, surreptitiously followed accused Nos.11, 12 and the accused and ultimately she saw that no sooner the deceased reached Vizan Outpost, accused Nos.1 to 10 who were armed with deadly weapons like axe, sickle, sword, etc., assaulted the deceased causing his instantaneous death. In the said application Romatbai has also stated that one watch worth Rs.600/- which the deceased was wearing was also taken away by the accused persons.

2.5. It is also the case of the prosecution that in the same manner one Jakab Umar also made an application in writing (Ex.23) to the Sub Inspector, Nalia Police Station stating that he witnessed the incident of assault alongwith Romatbai. It is the case of the prosecution that when the investigation was in progress all the concerned police officials who carried out the investigation did not pay any heed to the two applications but ultimately charge-sheeted three other persons in which one of the accused persons was juvenile. Therefore, Romatbai filed a private complaint on November 24, 1982 in the court of learned JMFC, Abdasa for the offence of murder of her brother Osman alias Agha Suleman. The learned Magistrate initiated Magisterial Inquiry under Section 202 of the Code and on January 31, 1983 issued process against the 12 accused persons for

the offence of murder punishable under Section 302 read with Section 34 of the IPC and thereafter he committed the case to the Court of Sessions of Kachchh District at Bhuj.

2.6. The learned Additional Sessions Judge, Kachchh at Bhuj framed charge against all the accused for commission of the offence under Section 302 read with Section 34 of the IPC which was read over and explained to them. The accused pleaded not guilty and claimed to be tried and thereupon they were tried in Sessions Case No.16 of 1983 by the learned Additional Sessions Judge, Kachchh District at Bhuj.

2.7. In order to bring home the charge framed against the accused, the prosecution has examined following witnesses:

(1) P.W.1 - Liladhar Kuvarji - Ex.16 - Panch witness who has been declared hostile.
(2) P.W.2 - Karsandas Ukeda - Ex.18 - Panch witness.
(3) P.W.3 - Romatbai Suleman - Ex.20 - sister of the deceased - eye witness to the incident.
(4) P.W.4 - Dr. Suresh Kanjibhai Parekh - Ex.29 - Medical Officer (Expert witness).
(5) P.W.5 - Jakab Umar - Ex.31 - witness to the incident.
(6) P.W.6 - Dosabhai Valjibhai Gadhvi - Ex.32 - One of the Investigating Officers.
(7) P.W.7 - Dahyabhai Bhailalbhai Parekh - Ex.34 - One of the Investigating Officers.
(8) P.W.8 - Roshanlal Roopchand Yadav - Ex.39 - One of the Investigating Officers.

2.8. Prosecution also placed reliance on the following documents to prove the culpability of the accused:

(i) Ex. 22 - Application in the form of a complaint made by Romatbai, sister of the deceased sometime on June 2, 1982 disclosing the names of the two accused persons and narrating as to how the incident occurred.
(ii) Ex. 23 - Application preferred by Jakab Umar in the form of a complaint addressed to Sub Inspector, Nalia narrating about the incident.
(iii) Ex. 38 - Complaint lodged by accused No.11 Mahipsinghji Ramsinghji before Nalia PSI Gadhvi on the basis of which the investigation commenced.
(iv) Ex. 44 - Copy of the deposition of Romatbai before the Juvenile Court where one of the three accused persons who were earlier charge-sheeted

being a juvenile was tried for the offence of murder of the deceased.

(v) Ex. 30 - Post-mortem report.

2.9. The learned Additional Sessions Judge, on analysis, appreciation, evaluation and scrutiny of the evidence on record came to the conclusion that homicidal death of Osman alias Agha Suleman is proved. The learned Additional Sessions Judge disbelieved the evidence of P.W.3 Romatbai, Ex.20 and P.W.5, Jakab Umar, Ex.31 by recording finding that both of them are got up eye witnesses and it is proved by cogent evidence that they have not witnessed the incident and they have deposed falsely before the Court and their evidence do not inspire any confidence. He has also recorded categorical finding that evidence of the eye witnesses is in conflict with the medical evidence. On the aforesaid premises the learned Additional Sessions Judge came to the conclusion that the charge levelled against the accused for commission of offence of murder is without any substance, baseless and it is not proved and hence the accused are not guilty of the offence under Section 302 read with Section 34 of the IPC and resultantly they are acquitted of the said charge which has given rise to the present appeal at the instance of the appellant - State of Gujarat.

3. Mr. L.R. Pujari, learned APP for the appellant - State of Gujarat, vehemently criticized the impugned judgment and order of acquittal. He has taken us through the evidence and more particularly through the evidence of eye witnesses i.e., Romatbai and Jakab Umar. Their evidence, according to him, is cogent, consistent and sufficient enough to connect the accused with the crime alleged against them and therefore there is no reason to discard the oral testimony of both the eye witnesses. What is emphasized by the learned APP is that order of acquittal is against the oral evidence recorded in the case and therefore the ultimate conclusions reached by the learned trial Judge are improper and unjust and hence the order of acquittal is erroneous, improper and illegal. He therefore urged to allow the appeal by quashing and setting aside the judgment and order of acquittal and by recording conviction, the respondents/accused may be dealt with in accordance with law by sentencing them.

4. Mr. J.B. Pardiwala, learned advocate for the respondents who has been appointed as amicus curiae by this Court to assist the court, has supported the judgment and order of acquittal recorded by the learned

Additional Sessions Judge throughout. He has also taken us through the evidence as well as the documents forming part of the trial of the Sessions Case No. 16 of 1983 and contended that there is no evidence worth the name to consider as the evidence of the so-called two eye witnesses suffer from serious infirmities and they have given goby to their previous statement recorded during the course of investigation. According to him, the learned trial Judge has rightly disbelieved the evidence of both the eye witnesses. It is also emphasized by him that so far as accused Nos. 11 and 12 are concerned, they are police personnel and in fact no charge is framed against them. In the entire evidence, there is no mention as to what was the role played by them except that at the relevant time they were in-charge of the said outpost and admittedly they were absent when the dead-body of Osman alias Agha Suleman was found from the said outpost. It is asserted by the learned advocate that if the evidence of both the eye witnesses are excluded there is no case against the accused and therefore the learned trial Judge has very rightly recorded acquittal which does not warrant any interference at the hands of this court in exercise of powers under Section 378 of the Code in view of the principles enunciated by the Apex court in respect of the acquittal appeals. He, therefore, urged that the appeal being devoid of merit, deserves to be dismissed and it may accordingly be dismissed.

5. At the outset it may be stated that on the basis of the complaint dated May 31, 1982 tendered by accused No.11 to Dosabhai Valjibhai Gadhvi, P.W.6, FIR came to be registered and investigation was put into motion and during the course of investigation, inquest panchnama of the dead-body of deceased was drawn, Panchnama of the scene of offence was prepared, blood samples were taken and sent to FSL and thereafter investigation was transferred to P.W.7, Dahyabhai Bhailalbhai Parekh and lastly it was transferred to P.W.8, Roshanlal Roopchand Yadav. P.W.8, Roshanlal Roopchand Yadav, placed all the relevant papers of investigation before the I.G. and the I.G. after perusal of the relevant papers cleared the file as a result of which charge-sheet against three persons other than the accused of this case was filed out of which one was a juvenile and therefore charge-sheet in respect of the juvenile was filed in juvenile court whereas against the other two accused, charge-sheet was filed in regular criminal court. It may be noted that all the three persons other than the accused of this case, against whom two separate charge-sheets were filed, came to be acquitted at the end of the trial. It may be

noted that Romatbai, sister of deceased had given an application in writing, Ex.22 in the form of a complaint wherein she has stated that accused Nos.11 and 12 - two police constables came to her house and informed her deceased brother that he has been called at the police station and accordingly the deceased accompanied them. Romatbai sensing some trouble surreptitiously followed accused Nos.11, 12 and the deceased and ultimately saw that no sooner the deceased reached Vizan outpost, accused Nos.1 to 10 who were armed with deadly weapons assaulted him causing his instantaneous death. Similar application also came to be filed by Jakab Umar vide Ex.23 to Sub Inspector, Nalia stating similar version which has been stated by Romatbai. Investigation did not pay any heed to the aforesaid two applications and filed charge-sheet against three persons as mentioned hereinabove other than the accused of this case. Romatbai filed a private complaint on November 24, 1992 in the Court of learned JMFC, Abdasa alleging murder of her brother Osman alias Agha Suleman. The learned JMFC, Abdasa initiated inquiry under Section 202 of the Code and issued process against 12 persons named therein for the offence of murder of Osman alias Agha Suleman punishable under Section 302 read with section 34 of the IPC and committed the case to the Court of Sessions, Kachchh District at Bhuj and that is how the trial of this case has commenced before the learned Additional Sessions Judge, Kachchh at Bhuj.

6. So far as homicidal death of Osman alias Agha Suleman is concerned, prosecution mainly relied upon the oral testimony of P.W.4, Dr.Suresh Kanjibhai Parekh, Ex.29 who has performed the autopsy. During his oral testimony he has testified and explained the injuries on the body of the deceased. According to him, the deceased had sustained 21 external injuries. Most of them were Contused Lacerated Wounds (CLW). Some of them were punctured wounds. Four injuries were internal injuries including fracture of the skull. As per the opinion of the doctor the punctured wounds were possible with weapons having pointed edges. CLWs were possible with hard and blunt objects. As per the evidence of the doctor, all the injuries were sufficient in the ordinary course of nature to cause death and the cause of death was due to laceration of brain and internal bleeding. The learned trial Judge has recorded the finding that the deceased died a homicidal death. The said finding is also not disputed by Mr. Pardiwala, learned advocate for the accused who has been appointed as amicus curiae. We agree with the said finding recorded by the learned trial Judge. Therefore, in view of the aforesaid evidence of

Dr. Suresh Kanjibhai Parekh, homicidal death of Osman alias Agha Suleman is duly proved.

7. To prove the culpability of the accused the prosecution has mainly relied upon the oral testimony of P.W.3, Romatbai, Ex.20 and P.W.5, Jakab Umar, Ex.31.

8. We have carefully scrutinised the oral evidence of both the witnesses. Romatbai, inter alia, testified that she had no idea or knowledge about the written complaint Ex.22 which she had tendered to PSI Nalia regarding the incident naming the 12 accused persons. She has inter alia admitted during her cross-examination that some individuals of the village persuaded her to put her thumb impression on the application. Similarly, P.W.5, Jakab Umar, Ex.31 has also inter alia testified that he had no knowledge or idea about the contents of the application dated June 2, 1982 (Ex.23), which he has tendered in the form of a complaint to PSI Nalia stating that he had witnessed the incident of assault naming the 12 accused persons. He has further testified that he had just put his thumb impression on the piece of paper on being persuaded by few individuals of the village but he had no idea as to what was written in the application. It may be appreciated that before the juvenile court also in Sessions Case No.56 of 1982, oral evidence of witness Romatbai was recorded and she had inter alia stated what she had stated in the Sessions Court that she had not witnessed the said incident. She has stated before the juvenile court something absolutely contrary to what she deposed during the trial of Sessions Case No.16 of 1983. In view of the aforesaid evidence it cannot be believed that they were eye witnesses to the incident of murder of Osman alias Agha Suleman. Therefore, the learned trial Judge has very rightly recorded the fining that both the eye witnesses are got up witnesses and it is proved by cogent evidence that they have not witnessed the incident and they have deposed falsely before the Court and their evidence do not inspire any confidence. In view of the aforesaid state of affairs, we are also of the opinion that evidence of both the eye witnesses do not inspire any confidence and therefore no credence can be given to them.

9. This being an acquittal appeal preferred by the State and where two views of the evidence are reasonably possible and the trial Court opted for one favouring acquittal, the High Court should not disturb the same merely on the ground that if it were in the position of the trial Court, it would have taken the alternative view and convicted the accused accordingly. It cannot be said

that the appreciation of the evidence by the trial court is perverse or that only one opinion, that is, that the accused were guilty of the offence was possible. In these circumstances, the judgment of acquittal recorded by the trial court deserves to be confirmed (See (i) Antarsingh vs. State of M.P. AIR 1979 SC 1188 (ii) Molu v. State of Haryana, AIR 1976 SC 2499).

10. On over all appreciation of the evidence, this Court is satisfied that there is no infirmity in the judgment recorded by the trial court acquitting the respondents/accused. There is cogent and convincing reasons to acquit the respondents/accused. The learned APP has failed to dislodge the reasons given by the learned trial Judge and convince this court to take a view contrary to the one taken by the learned trial Judge. Therefore, the impugned judgment and order of acquittal recorded by the learned trial Judge requires to be confirmed.

11. For the foregoing reasons, the appeal filed by the appellant - State being meritless deserves to be dismissed and accordingly it is dismissed. The respondents are on bail. Therefore, their bail bonds shall stand cancelled and sureties are discharged.

12. While parting, it be noted that since the respondents/accused though duly served twice have remained absent, this Court thought it fit to appoint an advocate of this Court as amicus curiae to assist the court and, therefore, vide order dated August 20, 2002 appointed Mr. J.B. Pardiwala, learned advocate of this Court as amicus curiae to assist the court in this appeal. Upon our request Mr. J.B. Pardiwala, learned amicus curiae, thoroughly prepared notes of the synopsis and the summary of the evidence of the prosecution case and the defence put up by the accused in the lower court which was very helpful to this court in deciding this appeal. We, therefore, place on record our gratitude and appreciation to Mr. J.B. Pardiwala, learned advocate who is appointed by this Court in this appeal as amicus curiae to assist the court.

(M.C. Patel, J.)

(A.M. Kapadia, J.)

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